

# Disciplinary and Other FINRA Actions

## Firms Fined, Individuals Sanctioned

Kensington Capital Corp. (CRD #1742, Brooklyn, New York), Abram Joseph Silver (CRD #1137930, Registered Principal, Brooklyn, New York) and Jeffrey Mitchel Simon (CRD #2778935, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which the firm was censured, fined \$85,000, \$10,000 of which was jointly and severally with Simon, and required to retain an independent consultant to conduct a comprehensive review of the adequacy of the firm's trading and Anti-Money Laundering (AML) policies, systems and procedures (written and otherwise), and its training related to trading and AML. Silver was fined \$10,000, suspended from association with any FINRA member in any principal capacity for 90 business days and immediately upon the completion of the 90-day principal suspension, Silver has agreed not to serve in the capacity of Chief Compliance Officer for six months. Silver must also complete 25 hours of AML continuing education within 12 months, and provide FINRA with written proof of his completion of the continuing education within 30 days. Simon was suspended from association with any FINRA member in any capacity for six months, and must requalify by exam as a general securities representative (Series 7) and/or as an equity trader limited representative (Series 55) before again becoming associated with any FINRA member in those capacities.

Without admitting or denying the allegations, the firm, Silver and Simon consented to the described sanctions and to the entry of findings that the firm, acting through Simon, aided and abetted a market manipulation of a thinly traded over-the-counter bulletin board (OTCBB) common stock orchestrated by an individual previously barred from the securities industry, and his brother who had a retail account at the firm. The findings stated that the firm, acting through Silver and another individual, failed to establish and implement AML policies and procedures reasonably designed to monitor, analyze and investigate suspicious transactions, and to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder. The findings also stated that the firm, acting through Silver, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures appropriate to its market making and retail trading business and the activities of its registered representatives so as to comply with federal securities laws, regulations and applicable NASD Rules relating to market making and trading. The findings also included that because Silver failed to reasonably supervise Simon's trading and market making activities, the firm, acting through Simon, rendered substantial assistance to the stock price manipulation.

Silver's suspension in any principal capacity is in effect from March 17, 2008, through July 23, 2008. Simon's suspension in any capacity is in effect from March 17, 2008, through September 16, 2008. (**FINRA Case #2005000094003**)

## Reported for April 2008

FINRA® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

**The Robins Group LLC (CRD #41894, Portland, Oregon) and Marcus Whitney Robins (CRD #870347, Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, \$5,000 of which was jointly and severally with Robins. Robins was suspended from association with any FINRA member in any capacity for 20 business days and fined an additional \$31,458.59, which includes disgorgement of \$16,458.59 in financial benefits received. Without admitting or denying the findings, the firm and Robins consented to the described sanctions and to the entry of findings that the firm permitted research analysts, including Robins, to execute sales of securities in research analyst accounts in a manner inconsistent with their recommendations, as reflected in the most recent research reports the firm published. The findings stated that the firm permitted research analysts, including Robins, to execute transactions of securities issued by companies that the research analysts followed in research analyst accounts 30 days before and five days after the publication of a research report concerning the companies. The findings also stated that the firm authorized stock transactions that NASD Rule 2711(g)(3) prohibited, purportedly based on an unanticipated change in the personal financial circumstances of the beneficial owner of the research analyst account, and failed to maintain written records regarding the transactions and the justification for permitting them for three years after the dates when the transactions were approved. The findings also included that the firm, acting through Robin, published research reports another analyst had written regarding a company, but the report did not disclose that the company had compensated the analyst within the past 12 months. FINRA found that the firm published research reports regarding a company and failed to disclose that the company had compensated a business entity affiliated with the firm within the past 12 months. FINRA also found that Robins published magazine articles, which a research analyst considered to be public appearances, and failed to disclose to the publisher that he or a member of his household had a financial interest in the securities of the companies, and the firm failed to maintain records of the articles sufficient to demonstrate Robins' compliance with the applicable disclosure requirements of NASD Rule 2711(h) for three years after the articles were published. In addition, FINRA determined that the firm failed to adopt or implement written supervisory procedures reasonably designed to ensure that it and its employees comply with NASD Rule 2711. Moreover, FINRA found that the firm published on its Web site an inaccurate list of its registered persons, including its research analysts, and the companies covered by their research, because some of the persons had terminated their association with the firm.

The suspension in any capacity was in effect from March 17, 2008, through April 14, 2008. (FINRA Case #2005001863901)

## Firms Fined

**Great Point Capital LLC (CRD #114203, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$175,000, ordered to disgorge \$21,628.45 and was required to revise its written supervisory procedures regarding manipulation and pre-opening quotations and trading. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, acting through its chief compliance officer, it failed to reasonably and properly supervise the pre-opening quoting and trading activity of equity traders at the firm. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning manipulation and pre-opening quotations and trading. (**FINRA Case #20050001741-01**)

**ING Financial Advisers, LLC (CRD #34815, Windsor, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file summary and statistical information for numerous public customer complaints that the firm received. The findings stated that the firm's supervisory system was not reasonably designed to ensure that summary and statistical information concerning customer complaints was filed in accordance with NASD Rule 3070. The findings also stated that the firm's supervisory system failed to provide for reasonable follow-up and review to ensure that required customer complaint filings were made. (**FINRA Case #2007007182602**)

**Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$175,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely and consistently update its client account record management system relating to investment advisory and fee-based accounts, and failed to establish a reasonable supervisory system to update the relevant client profiles in its system. The findings stated that the firm failed to establish a reasonable system to monitor for the proper completion of the manual process to update profiles, failed to have adequate written procedures detailing the process, and failed to implement a reasonable system of follow-up and review to ensure that the changes were made. The findings also stated that the firm's operational problems resulted in its failure to make changes in account proxy delivery addresses and/or remove traits that suppressed trade confirmation delivery in the firm's record systems. The findings included that proxy materials were misdelivered when clients changed programs, and clients did not receive trade confirmations after they terminated enrollment in such programs. FINRA found that although affected clients continued to receive monthly account statements about transactions in their accounts, the monthly statements were not produced prior to or contemporaneously with securities transactions. FINRA also found that the firm failed to consistently and timely update information in its client account record management system. (**FINRA Case #2007009456801**)

**Pershing LLC (CRD #7560, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$95,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it employed persons who were statutorily disqualified because it failed to submit the fingerprints of temporary workers who were working for the firm for a background check to the Federal Bureau of Investigation (FBI), and failed to promptly notify the New York Stock Exchange (NYSE) of its association with persons subject to statutory disqualification. The findings stated that the firm failed to establish, maintain and enforce written procedures, including a system of follow-up and review of its business activities, with respect to its hiring of temporary workers to achieve compliance with federal securities laws, NASD and NYSE Rules relating to association with statutorily disqualified individuals. (**FINRA Case #2007009522001**)

**Pickering Energy Partners, Inc., nka Tudor, Pickering, Holt & Co. Securities, Inc. (CRD #129772, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its minimum net capital requirement. The findings stated that the firm filed an inaccurate Financial and Operational Combined Uniform Single (FOCUS) report. (**FINRA Case #2007007453101**)

**Seslia Securities (CRD #30624, St. Thomas, Virgin Islands)** submitted a Letter of Acceptance, Waver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to retain instant messages in violation of Securities and Exchange Commission (SEC) Rule 17a-4, and failed to maintain records documenting the content of its continuing education programs (firm element) and covered registered persons' completion of the programs. (**FINRA Case #2007007154201**)

**Track Data Securities Corporation (CRD #103802, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to revise its written supervisory procedures regarding SEC Rule 605 (disclosure of order execution information), NASD Rule 4613A and Interpretative Material 4613-1 (multiple market participant IDs), trade reporting modifiers, NASD Rule 6630(e) (third-party trade reporting), NASD Rules 4623(c) and 4623A(c) (electronic communications network (ECN) display rules) and trading during a trading halt. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in securities and, for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that the firm failed to submit required information to the Order Audit Trail System (OATS); submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data; and reported execution reports to OATS that contained inaccurate, incomplete or improperly formatted data so that the OATS system was unable to link the execution

reports to the related trade reports in a FINRA trade reporting system. The findings also stated that the firm reported to the Trade Reporting Facility (TRF) last sale reports of transactions in designated securities that it was not required to report. The findings also included that the firm made available a report on the covered orders in national market system securities it received for execution from any person that included incorrect information as to the average realized spread, number of totaled covered orders, total covered shares, total cancelled shares and order classification.

FINRA found that the firm executed short sale transactions and failed to report each of the transactions to the TRF with a short sale modifier. FINRA also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning SEC Rule 605 (disclosure of order execution information), NASD Rule 4613A and Interpretative Material 4613-1 (multiple market participant IDs), trade reporting modifiers, NASD Rule 6630(e) (third-party trade reporting), NASD Rules 4623(c) and 4623A(c) (ECN display rules) and trading during a trading halt. In addition, FINRA determined that the firm failed to enforce its written supervisory procedures regarding OATS clock synchronization, SEC Rules 17a-3, 17a-4 and NASD Rule 3110. Moreover, FINRA found that the firm failed, within 10 seconds of receipt of the order, to transmit to FINRA's Alternative Display Facility, order information for orders received from another broker-dealer. (**FINRA Case #20050008081-01**)

**UBS Financial Services Inc. (CRD #8174, Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$110,000, required to pay \$2,719.65, plus interest, in restitution to public customers, and required to revise its written supervisory procedures regarding short sales and short interest reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with customers, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm executed short sale orders and failed to properly mark the order tickets as short. The findings also stated that the firm accepted customer short sale orders in securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings also included that the firm executed short sale transactions and failed to report each of the transactions to the TRF with a short sale modifier. FINRA found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning short sales and short interest reporting. FINRA also found that the firm submitted incorrect short interest reports to FINRA and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that the reports erroneously reported, or failed to report, display flags to OATS. (**FINRA Case #20041000031-01**)

## Individuals Barred or Suspended

**John Hutchison Arnette (CRD #7458, Registered Representative, Dallas, Texas)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Arnette failed to appear for FINRA on-the-record interviews. The findings stated that Arnette engaged in private securities transactions without prior written notice to, and approval from, his member firm. ([FINRA Case #2005002734201](#))

**Gene Michael Askins (CRD #5172158, Associated Person, Elmhurst, New York)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Askins consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Uniform Application for Securities Industry License or Transfer (Form U4) and failed to respond to FINRA requests for information. ([FINRA Case #2007007607801](#))

**Tarrant McCutchen Augustine (CRD #1081795, Registered Representative, Hershey, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Augustine consented to the described sanction and to the entry of findings that he created and sent falsified account statements to a public customer that inflated the value of the customer's mutual fund. ([FINRA Case #2007009299901](#))

**Joseph Dalyn Bailey (CRD #4608681, Registered Representative, Mustang, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bailey consented to the described sanction and to the entry of findings that he deposited monies from a premium trust account into his personal checking account without the policy holders' authorization, knowledge or consent. The findings stated that Bailey failed to respond to FINRA requests for documents and failed to respond promptly to requests for information. ([FINRA Case #2006006935302](#))

**Justin Matthew Barlup (CRD #5012726, Registered Representative, Anchorage, Alaska)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Barlup consented to the described sanction and to the entry of findings that he caused a bank to issue cashier's checks totaling \$500,000 payable to his relative and signed the checks, knowing that the bank had received no offsetting payments for the checks, thereby converting \$500,000 of the bank's funds to his own use and benefit. The findings stated that Barlup failed to respond to FINRA requests for information. ([FINRA Case #2007007716601](#))

**Walter J. Becker (CRD #16443, Registered Principal, Fresno, California)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Becker consented to the described sanction and to the entry of findings that he recommended the purchase of securities to public customers without reasonable grounds for believing the recommendations were suitable based upon the customers' financial situation and

needs. The findings stated that Becker omitted to disclose material information to the customers prior to their purchase of the securities. The findings also stated that Becker applied some or all of the proceeds from the securities to his personal use. (FINRA Case #20050025094-01)

**Alex Lee Bernal (CRD #5266422, Associated Person, Santa Barbara, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six-months. The fine must be paid either immediately upon Bernal's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Bernal consented to the described sanctions and to the entry of findings that he failed to disclose material facts on an application for employment he submitted to his member firm.

The suspension in any capacity is in effect from March 17, 2008, through September 16, 2008. (FINRA Case #2007009433401)

**Stephen Joseph Berry (CRD #1232555, Registered Representative, Hollis, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Berry consented to the described sanction and to the entry of findings that he recommended and effected purchases of speculative securities in public customers' accounts without reasonable grounds for believing the recommendations were suitable. The findings stated that Berry failed to respond to FINRA requests for information. (FINRA Case #2007009957001)

**Dean Robert Bordeaux (CRD #4204454, Registered Representative, Peoria, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 12 months. The fine must be paid either immediately upon Bordeaux's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Bordeaux consented to the described sanctions and to the entry of findings that he solicited the purchase of a security to his customers although it was not blue-sky registered in Illinois during the relevant period. The findings stated that Bordeaux mismarked order tickets for purchases of the security in some of his customers' accounts as "unsolicited" when, in fact, the trades were solicited and caused Non-Solicitation Letters to be sent to some of the customers who purchased the security. The findings also included that the Non-Solicitation Letters stated that Bordeaux had not solicited in any way, nor had the purchase been made on the basis of any recommendation of information from his member firm, its Research Department, or any of its employees when, in fact, he knew that he had solicited these purchases at the time he caused these letters to be sent to his firm's customers.

The suspension in any capacity is in effect from March 17, 2008, through March 16, 2009. (FINRA Case #2007009423701)

**Mellon Daniel Bryant (CRD #4741516, Registered Representative, Fort Worth, Texas)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Bryant failed to respond to FINRA requests for information. The findings stated that Bryant willfully failed to disclose material information on his Form U4. ([FINRA Case #2006006368001](#))

**DeVon Jerrod Carlson (CRD #2875123, Registered Representative, DeSoto, Kansas)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Carlson consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. ([FINRA Case #20070089708-01](#))

**Angelo David Castricone (CRD #3022052, Registered Representative, Scotia, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Castricone consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from April 7, 2008, through April 18, 2008. ([FINRA Case #2008012269801](#))

**John Shim Cho (CRD #4480149, Registered Representative, Skokie, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Cho consented to the described sanction and to the entry of findings that he received \$8,400 from a public customer for assisting him in avoiding overdrafts in his business checking account. The findings stated that Cho affixed the customer's signature to checking account withdrawal slips to withdraw the funds from the customer's business checking account as payment for avoiding overdrafts in the account. ([FINRA Case #2006007065701](#))

**David Skaggs Curtis (CRD #3045672, Registered Representative, Morganfield, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Curtis' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Curtis consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from March 17, 2008, through June 16, 2008. ([FINRA Case #2006007438601](#))

**Gregory Orlan Dartez (CRD #4827097, Registered Representative, Allen Texas) and Jerry Glenn Griggs (CRD #2451366, Registered Representative, Grapevine, Texas)** submitted Letters of Acceptance, Waiver and Consent in which they were barred from association with any FINRA member in any capacity. Without admitting or denying the findings,

Dartez and Griggs consented to the described sanctions and to the entry of findings that they wrote and disseminated press releases touting the securities of an oil and gas company that were not fair and balanced, and failed to provide a sound basis for evaluating the facts regarding the securities. The findings stated that the press releases omitted material facts, including the company's recent revenues, causing the press releases to be misleading. ([FINRA Cases #20060066266-01/20060066266-02](#))

**Richard Joseph Delzer (CRD #5097434, Registered Representative, Elyria, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Delzer consented to the described sanction and to the entry of findings that he withdrew \$9,000 from public customers' accounts without their knowledge or consent, and used the funds for his own benefit or for some benefit other than the customers. ([FINRA Case #2007008760801](#))

**Lesly Charles Deverson (CRD #4075977, Registered Principal, Elmont, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Deverson consented to the described sanction and to the entry of findings that he forged public customers' signatures on redemption checks and misappropriated the customers' funds totaling \$713.70. ([FINRA Case #2007009191501](#))

**Steven Dubinsky (CRD #2699892, Registered Principal, Dix Hills, New York) and Michael John Pata (CRD #2699862, Registered Principal, Huntington Bay, New York)** submitted Letters of Acceptance, Waiver and Consent in which each was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, Dubinsky and Pata consented to the described sanctions and to the entry of findings that they failed to properly supervise a registered representative who was engaged in excessive trading in customer accounts.

Dubinsky's suspension in any principal capacity was in effect from February 19, 2008, through March 3, 2008. Pata's suspension in any principal capacity was in effect from March 4, 2008, through March 17, 2008. ([FINRA Cases #ELI2004035401/ELI2004035402](#))

**David Neil Frand (CRD #3224947, Registered Representative, Parkland, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Frand's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Frand consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from March 17, 2008, through June 16, 2008. ([FINRA Case #2007008109101](#))

**Beatriz Fresquez (CRD #4879159, Registered Representative, Edinburg, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Fresquez consented to the described sanction and to the entry of findings that she converted funds from a public customer by ordering an automatic teller machine (ATM) card for the customer, creating a personal identification number (PIN) number for the card and using the card to withdraw \$23,323.50 from the customer's bank account. The findings stated that Fresquez also used bank counter withdrawal forms to withdraw \$42,923.50 from the account without the customer's knowledge or consent. The findings also stated that Fresquez failed to respond to FINRA requests for information. (FINRA Case #2007010423101)

**Mary Denise Gustavson (CRD #4950885, Registered Representative, McKinney, Texas)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Gustavson assisted a public customer in obtaining a loan from a bank and to ensure that the customer obtained the loan, she retrieved a financial statement from a third person and pasted the customer's name and date of birth over the third person's name and date of birth to make it appear as if it were the customer's financial statement. The findings stated that Gustavson copied the altered document and submitted the copy to the bank to support the customer's loan application. The findings also stated that Gustavson failed to respond to FINRA requests for information. (FINRA Case #2006007458501)

**Ray Wesley Hager (CRD #2802640, Registered Principal, Morrison, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Hager consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. (FINRA Case #20060057354-01)

**Warren Karl Hansen (CRD #3014245, Associated Person, Boca Raton, Florida)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Hansen failed to respond to FINRA requests for information and documents. (FINRA Case #2005001085001)

**William Anthony Kaso (CRD #3147471, Registered Representative, Pembroke Pines, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for seven months, with credit to be given for six months. Without admitting or denying the findings, Kaso consented to the described sanctions and to the entry of findings that he failed to timely respond to FINRA requests for information.

The suspension in any capacity is in effect from March 17, 2008, through April 16, 2008. (FINRA Case #2006005016102)

**John Alvin Kelsey (CRD #4554701, Registered Representative, La Crosse, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Kelsey consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for documents and information. (FINRA Case #20070090270-01)

**Christopher Shawn Kyle (CRD #4536575, Registered Principal, Ocala, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Kyle's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Kyle consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from March 3, 2008, through September 2, 2008. (FINRA Case #2007008617101)

**Jeffrey Michael Laster (CRD #2386216, Registered Representative, Florham Park, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Laster consented to the described sanction and to the entry of findings that he submitted a falsified letter in another registered representative's name requesting a hardship withdrawal of \$3,308 from that representative's trading account without his authorization or consent. The findings stated that Laster forged the registered representative's signature on the letter and on the check that was subsequently issued as a result of his request and received the proceeds. (FINRA Case #2007009113301)

**Julianna Lynn Makuch (CRD #2812856, Registered Representative, Clermont, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon Makuch's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Makuch consented to the described sanctions and to the entry of findings that instead of requiring employees to execute new corrected investment-option selection forms for 401(k) retirement savings plans, she completed the forms using information provided on the original employee forms and affixed a photocopy of the employee's signature on the new forms.

The suspension in any capacity is in effect from March 3, 2008, through July 2, 2008. (FINRA Case #2006005191201)

**Susan A. Mann (CRD #2213721, Registered Representative, Victor, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Mann consented to the described sanctions and to the entry of findings that she borrowed \$10,000 from a public customer contrary to her member firm's written supervisory procedures prohibiting its representatives from borrowing money from customers. The findings stated that Mann failed to inform her firm of the loan or otherwise obtain permission.

The suspension in any capacity was in effect from March 17, 2008, through March 31, 2008. (FINRA Case #2007010717301)

**Joel S. Mitchell (CRD #4250337, Registered Principal, Lanoka Harbor, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Mitchell consented to the described sanction and to the entry of findings that he changed a public customer's address for her individual retirement accounts to his own address without her authorization or consent, entered numerous unauthorized redemptions of mutual fund shares in the accounts, forged the customer's signature on checks totaling \$44,697.70, then converted the proceeds for his own use and benefit. The findings stated that Mitchell improperly opened several credit card accounts in the customer's name, listed himself as an authorized user and obtained \$63,169.16 in cash advances, which he misappropriated for his own use and benefit. ([FINRA Case #2007009448901](#))

**Paula Ludwig Nordquist (CRD #5123181, Associated Person, Largo, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Nordquist consented to the described sanction and to the entry of findings that she effected unauthorized withdrawals totaling \$3,500 from a public customer's bank account and used the funds for her own use and benefit. ([FINRA Case #2007009038901](#))

**Stephen G. Rittenberg (CRD #3092989, Registered Representative, Westwood, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. The fine must be paid either immediately upon Rittenberg's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Rittenberg consented to the described sanctions and to the entry of findings that he prepared and distributed unapproved sales literature at seminars for active and retired educators. The findings stated that the sales literature failed to disclose Rittenberg's member firm, and a principal at his firm did not review the sales literature and evidence its review in writing. The findings stated that some of the customer information questionnaires Rittenberg prepared for distribution at the seminars were misleading because they claimed that any information provided would be held confidential when that was not the case.

The suspension in any capacity was in effect from March 3, 2008, through April 1, 2008. ([FINRA Case #2006006533901](#))

**Xadimul R. Samba (CRD #5181951, Associated Person, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Samba's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Samba consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Samba failed to timely respond to FINRA requests for information.

The suspension in any capacity is in effect from March 17, 2008, through March 16, 2009. (FINRA Case #2006006643801)

**Daniel Joseph Schneider (CRD #2753359, Registered Supervisor, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 140 days. The fine must be paid either immediately upon Schneider's reassociation with a FINRA member firm following the suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Schneider consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in public customers' accounts.

The suspension in any capacity is in effect from February 19, 2008, through July 7, 2008. (FINRA Case # 20070094420)

**George Sepero (CRD #4324398, Registered Representative, Hackensack, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Sepero consented to the described sanction and to the entry of findings that he effected unauthorized securities transactions in public customers' accounts and provided false testimony during a FINRA on-the-record interview. (FINRA Case #2006005804301)

**Donna Marie Shurot (CRD #1443423, Registered Representative, Gilbert, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Shurot consented to the described sanction and to the entry of findings that she received \$58,000 from a public customer to purchase a life insurance policy, deposited the funds in her own personal account at her member firm, transferred \$58,479 to her IRA account at the firm and failed to submit a life insurance application for the customer to the firm. The findings stated that Shurot caused another member firm to transfer \$6,712 from a deceased customer's account at that firm by completing a request for redemption form, without authorization from the customer's estate, and included instructions on the form that the funds be made payable to an account belonging to Shurot at her member firm. (FINRA Case #2006006753101)

**Timothy James Stauffer (CRD #3220484, Registered Representative, Centerville, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Stauffer consented to the described sanction and to the entry of findings that he misappropriated \$523,822.50 from his member firm's public customers by obtaining letters of authorization (LOA) signed in blank by the customers and subsequently, without authorization, filled in the LOA to direct that checks or wire transfers be paid out of the customer's account. The findings stated that Stauffer wrongfully used an ATM debit card issued to his brother's account to misappropriate \$8,134 by ATM withdrawals from the account. The findings also stated that Stauffer failed to respond to FINRA requests to provide testimony. (FINRA Case #20070094652)

**William Jerome Svete (CRD #4612785, Associated Person, Mentor, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 15 business days. The fine must be paid either immediately upon Svete's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Svete consented to the described sanctions and to the entry of findings that he actively engaged in the management of his member firm's securities business without being registered with FINRA in a principal capacity.

The suspension in any capacity was in effect from March 17, 2008, through April 7, 2008. (**FINRA Case #E062005003201**)

**Ellerd Bruce Tomte (CRD #3195759, Registered Representative, Park Rapids, Minnesota)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. Without admitting or denying the allegations, Tomte consented to the described sanctions and to the entry of findings that he failed to tell public customers that his member firm would not agree to him charging an hourly fee in lieu of receiving commissions for securities transactions in their account, but received \$23,723.02 in commissions for the transactions he recommended and executed in their account. The findings stated that Tomte gave the customers excuses for why he could not give them an accounting of the hours he was purportedly charging to work on their account. The findings also stated that Tomte submitted correspondence to the customers that contained exaggerated or unwarranted statements or claims without approval from his firm, in violation of his firm's written supervisory procedures.

The suspension in any capacity is in effect from April 7, 2008, through August 6, 2008. (**FINRA Case #E0420040478-01**)

**Dana Dewitt Toney (CRD #2617246, Registered Representative, Las Vegas, Nevada)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Toney failed to respond to FINRA requests for information. The findings stated that Toney engaged in outside business activities without providing his member firm with prior written notice. (**FINRA Case #2006006995801**)

**Vincent Michael Uberti (CRD #2618595, Registered Principal, Fountain Valley, California)** was fined \$20,000, suspended from association with any FINRA member in any capacity for six months, barred from association with any FINRA member in any capacity, and must requalify by examination as a general securities representative and a general securities principal should he return to the securities industry. The sanctions were imposed by the National Adjudicatory Council (NAC) in a decision on remand from the SEC. The sanctions were based on findings that Uberti issued research reports on companies that fraudulently failed to disclose material information and contained misleading, exaggerated and false statements. The findings stated that Uberti failed to disclose that the firm had received compensation for preparing and disseminating the reports.

Uberti has appealed this decision to the SEC, and the sanctions, except for the bar, are not in effect pending consideration of the appeal. ([FINRA Case #CAF20020048](#))

**John James Walsh (CRD #4626228, Registered Representative, Centereach, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$26,500, which includes disgorgement of \$18,820 in commissions, and suspended from association with any FINRA member in any capacity for 60 days. Walsh must also requalify by examination as a general securities representative. In addition, Walsh was ordered to pay \$3,456, plus interest, in restitution to a public customer. The fine and restitution are due and payable either immediately upon Walsh's reassociation with a member firm following the suspension, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Without admitting or denying the findings, Walsh consented to the described sanctions and to the entry of findings that he exercised discretion in securities transactions in a public customer's account, without the customer's prior written authorization and his member firm's prior written acceptance of the account as discretionary. The findings stated that Walsh executed an unauthorized equity sale in a customer's account without the customer's knowledge or consent.

The suspension in any capacity is in effect from March 17, 2008, through May 15, 2008. ([FINRA Case #2007011095801](#))

**Juergen Weber (CRD #2617323, Registered Representative, Virginia Beach, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,888, of which \$888 represents disgorgement of compensation received from unauthorized transactions, and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Weber's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Weber consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in public customers' accounts. The findings stated that Weber exercised discretion in public customers' accounts without their written authorization and his member firm's written acceptance of the accounts as discretionary.

The suspension in any capacity will be in effect from February 19, 2008, through May 18, 2008. ([FINRA Case #2007009411401](#))

**Fredrick Anthony Woods Jr. (CRD #4602685, Registered Representative, Winston-Salem, North Carolina)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Woods submitted loan applications to a bank on public customers' behalf and photocopied their signatures from their bank signature cards onto the loan documents before submitting them to the bank, without their knowledge, consent or authorization. The findings stated that Woods failed to respond fully to FINRA requests for information. ([FINRA Case #2006005689501](#))

**Ibrahim Ziblim (CRD #5311046, Registered Representative, Newark, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Ziblim consented to the described sanction and to the entry of findings that he created an ATM card for a banking customer's account without the customer's authorization or consent, and subsequently used the card to withdraw \$1,000 from the account, converting the proceeds for his own use and benefit. (**FINRA Case #2007010930401**)

### Individuals Fined

**Donald Fruehauf Chamberlin Jr. (CRD #1357783, Registered Principal, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$10,000 and, in the event that he becomes associated with a FINRA member firm at anytime in the future, must, within 30 days of such association, advise the compliance officer of the firm of the securities industry bars imposed on his father and brother. Without admitting or denying the findings, Chamberlin consented to the described sanctions and to the entry of findings that he negligently allowed his father and brother, who were both barred from association with any broker, dealer or investment adviser pursuant to a settlement with the SEC, to engage in securities-related activity with public customers. (**FINRA Case #2008012114301**)

**Garry Bruce Lindboe (CRD #309834, Registered Principal, Martinsville, Indiana)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$25,000, of which \$2,500 was jointly and severally. Without admitting or denying the findings, Lindboe consented to the described sanctions and to the entry of findings that a member firm, acting through Lindboe, operated a securities business without employing a properly registered financial and operations principal (FINOP). The findings stated that the firm, acting through Lindboe, failed to prepare a general ledger and a trial balance from February 2003 through October 2007. (**FINRA Case #2007007331101**)

### Complaints Filed

FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding these allegations in the complaint.

**Nathan James Lorne (CRD #3277561, Registered Representative, Denver, Colorado)** was named as a respondent in a FINRA complaint alleging that he knowingly and willfully made unauthorized withdrawals totaling \$12,101 from a trade association's bank account while serving as a chapter treasurer without the authorization or knowledge of the trade association's Board of Directors, and hid the withdrawals by submitting false financial reports at association meetings, thereby converting customer funds to his

personal use. The complaint alleges that Lorne engaged in outside business activities without providing prompt written notice to his member firm, and made false representations in compliance certifications to his member firm that he was not engaged in any outside business activity nor served as an officer, director or employee of any organization. (FINRA Case #2006005523401)

**Louis Steven Majano Jr. (CRD #2520626, Registered Representative, Roslyn Heights, New York)** was named as a respondent in a FINRA complaint alleging that he made unauthorized withdrawals from a public customer's account totaling \$20,500 without the customer's knowledge or consent, and failed to respond to FINRA requests for information. (FINRA Case #2007008964101)

**Mission Securities Corporation (CRD #41779, San Diego, California) and Craig Michael Biddick (CRD #2382884, Registered Principal, Rancho Santa Fe, California)** were named as respondents in a FINRA complaint alleging that without the knowledge, authorization, consent of, or notice to, public customers, the firm, acting through Biddick, transferred common stock shares from customer accounts to the firm's proprietary trading account and did not provide any customer with compensation for the transferred shares. The complaint alleges that without the customers' knowledge, authorization or consent, the firm, acting through Biddick, sold some of the transferred shares and received \$39,940 in sales proceeds in its proprietary trading account, and used the proceeds toward firm operating expenses including, but not limited to, compliance with SEC Rule 15c3, thereby misusing customer securities. The complaint also alleges that the firm, acting through Biddick, utilized the instrumentalities of interstate commerce to engage in securities business while failing to maintain minimum net capital. The complaint further alleges that the firm and Biddick failed to comply with the Taping Rule by not providing notice to customers and potential customers engaged in telephone communications with the firm that the firm was recording incoming and outgoing calls. (FINRA Case #2006003738501)

**Max Morehouse (CRD #5289368, Registered Representative, Huntington Station, New York)** was named as a respondent in a FINRA complaint alleging that he made withdrawals totaling \$240 from a public customer's bank account for his personal use, by using a temporary ATM card he linked to the account, without the customer's knowledge or consent. (FINRA Case #2007010607601)

**Paul William Roles (CRD #2847856, Registered Representative, New York, New York)** was named as a respondent in a FINRA complaint alleging that he inputted inaccurate information on numerous new account applications for a public customer that provided an exaggerated picture of the customer's investment objectives, risk profile, net worth and investment experience. The complaint alleges that Roles inputted the inflated descriptions of the customer's financial situation in order to pursue an aggressive investment strategy on her behalf that was unsuitable in light of her true financial situation. The complaint also alleges that Roles' trading activity in the account was excessive in size and frequency in view of the customer's financial circumstances and investment objectives. (FINRA Case #2005002151001)

**Shane Michael Turner (CRD #4639366, Registered Representative, Boise, Idaho)** was named as a respondent in a FINRA complaint alleging that he engaged in private securities transactions without prior written notice to, and approval from, his member firms. The complaint alleges that Turner received \$20,000 from a public customer to be placed in a real estate investment trust, but instead placed the funds in a securities brokerage account in his own name, thereby making improper use of the customer's funds. The complaint also alleges that Turner received \$60,000 from investors to purchase an investment contract and provided the customers with a purported account statement representing that Turner, as writing agent, had purchased an annuity for the customers, thereby falsely representing to the customers that he had purchased the annuity on their behalf. The complaint further alleges that Turner opened a securities account at a member firm other than his own without notifying his member firms in writing of the other firm, and without notifying the other firm in writing of his association with other member firms. In addition, the complaint alleges that Turner failed to respond to FINRA requests for information. ([FINRA Case #2006005347401](#))

**Josue Amaro Villarreal (CRD #4743080, Registered Representative, Dallas, Texas)** was named as a respondent in a FINRA complaint alleging that he received \$6,083.05 from public customers to pay for their policy premiums, and converted the funds to his own use and benefit. The complaint alleges that Villarreal failed to respond to FINRA requests for information. ([FINRA Case #2006006947101](#))

**Firm Expelled for Failure to Supply Financial Information**

**U-Trade Brokerage, LLC**  
 Franklin Lakes, New Jersey  
 (February 14, 2008)

**Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Beller Securities Corp.**  
 Dix Hills, New York  
 (February 26, 2008)

**Individuals Revoked for Failing to Pay Fines and/or Costs Pursuant to NASD Rule 8320**

(If the revocation has been rescinded, the date follows the revocation date.)

**James Lewis Weiland**  
 Loveland, Ohio  
 (April 27, 1990 – February 26, 2008)

**John Foster Wilkinson**  
 Birmingham, Michigan  
 (December 11, 2006 – February 15, 2008)

**Individuals Barred Pursuant to NASD Rule 9552(h)**

(If the bar has been vacated, the date follows the bar date.)

**Barry Lee Bellan**  
 South Bend, Indiana  
 (February 26, 2008)

**Randy Scott Plumley**  
 Blossvale, New York  
 (February 22, 2008)

**Tiffany Lynne Simon**  
 Columbus, Ohio  
 (February 14, 2008)

**John Andrew Trout**  
 St. Claire Shores, Michigan  
 (February 25, 2008)

**Todd Allyn Williams**  
 Akron, Ohio  
 (February 28, 2008)

**Individuals Suspended Pursuant to NASD Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Sean Christopher Brack**  
 Normal, Illinois  
 (February 4, 2008)

**Amil Duane Demrow**  
 Fort Collins, Colorado  
 (February 11, 2008)

**Wilfred Junior Ignace**  
 Brooklyn, New York  
 (December 3, 2007 – February 27, 2008)

**Victor L. Whang**  
 Chesterfield, Michigan  
 (February 11, 2008)

**Individuals Suspended Pursuant to  
NASD Rule Series 9554 for Failure to  
Comply with an Arbitration Award or  
Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Daniel Scott Bookout**

Greenwood, Indiana  
(February 1, 2008)

**John Edwin Craine**

Lexington, Kentucky  
(February 6, 2008)

**Chad Austin Curtis**

Ft. Lauderdale, Florida  
(February 6, 2008)

**Christopher Edward Frazier**

Littleton, Colorado  
(February 28, 2008 – March 10, 2008)

**Wayne Hubert Lieberz**

Woodbury, New York  
(February 6, 2008)

**Michael J. Pinckes**

Hollywood, Florida  
(February 13, 2008 – February 15, 2008)

**Martin Rybak**

Bronx, New York  
(February 13, 2008)

**Stephen David Stroud**

Galveston, Texas  
(February 12, 2008)

**Edward Joseph Wetzel**

Butler, Pennsylvania  
(February 28, 2008)

## FINRA Charges Broker for Misappropriating Almost \$400,000 from 97-Year-Old Widow and Her Charitable Foundation

### **Broker and His Wife Also Face Additional Related Charges**

The Financial Industry Regulatory Authority (FINRA) has charged registered representative John Edward Mullins, of Margate, NJ, with misappropriating almost \$400,000 from a 97-year-old nursing home resident who was a Mullins' client for more than 20 years, as well as from her charitable foundation. The customer has recently passed away. Broker Kathleen Maria Mullins, John Mullins' wife, was also charged with wrongdoing.

In addition to the misappropriation, FINRA charged John Mullins with attempting to misappropriate funds from his employer relating to improper expense submissions, accepting an unauthorized \$100,000 loan from the client, and making misstatements on his firm's annual compliance questionnaires and Form U4 in an apparent effort to conceal his officer and trustee status with the charitable foundation. Kathleen Mullins was charged with accepting a loan from the customer and making misstatements on her Form U4 and annual compliance questionnaires. In addition, both were charged with failure to adhere to high standards of commercial honor and just and equitable principles of trade.

"Seniors are among the most vulnerable to financial wrongdoing," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "In this instance, an unprincipled broker took advantage of a trusting, elderly customer and her charitable foundation at a time when she was hospitalized and her health was failing. We will seek the strongest possible sanctions for this reprehensible, deceitful conduct."

In its complaint, FINRA alleges that shortly after the customer's husband died in December 1999, the customer established a charitable foundation to receive and administer funds for the benefit of charities devoted to the promotion of musical arts in Philadelphia and the New Jersey Shore. From its creation, the Mullins both served as trustees and officers of the foundation. When the customer initially entered a nursing home in 2000, the Mullins were provided power of attorney over the customer's assets, including the ability to conduct banking transactions and withdraw funds.

FINRA further alleges that from about April 2006 through July 2006—when the customer became ill and was hospitalized—Mr. Mullins misappropriated almost \$400,000 from his longstanding client. With the elderly customer's health deteriorating, he took advantage of her condition by using her checking account and debit cards to pay for his and his wife's personal expenses, including paying down \$375,000 in their joint mortgage credit-line account.

The complaint charges that beyond paying off the mortgage credit-line, Mr. Mullins began to use the customer's checks and debit cards largely to make purchases for himself and his wife. These purchases and debits included: \$14,120 in ATM cash withdrawals, \$11,264 for meals at restaurants, delicatessens and purchases at confectionary shops, \$4,653 for groceries and \$1,046 for gasoline. John Mullins signed either the customer's name, or his own name, to debit card receipts.

In addition to the customer's personal assets, the complaint charges, funds were also misappropriated from the charitable foundation account, set up by the customer at the brokerage firm that employed the Mullins'. For example, John Mullins used the customer's foundation account debit card to purchase approximately \$16,500 in gift certificates. He then redeemed \$5,500 in gift certificates to pay down a retail store account bill, and redeemed \$4,000 in Hotel gift certificates during a vacation to London that he took with his wife.

Under FINRA Rules, a firm or individual named in a complaint can file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution. The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

### Oppenheimer & Co. to Pay \$4.5 Million to Settle FINRA Market Timing Charges

#### **Improper Trades Made on Behalf of Hedge Fund Client; Over 60 Mutual Fund Companies to Receive Restitution**

The Financial Industry Regulatory Authority (FINRA) announced that Oppenheimer & Co. will pay a fine of \$250,000 for supervisory and other failures in connection with improper market timing of mutual fund shares from January through September 2003. The firm will also pay \$4.25 million in restitution to more than 60 mutual fund companies.

"Market timing harms long-term fund investors who ultimately bear the brunt of higher costs long after market timers have moved on to the next quick trade," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement.

"Oppenheimer's lack of appropriate supervisory systems and controls led to the firm's failure to heed hundreds of warnings and requests it received from mutual funds and life insurance companies for the firm's brokers to cease this trading for hedge funds."

Market timing is short-term buying and selling of mutual fund shares to take advantage of inefficiencies in mutual fund pricing. Market timing can harm long-term mutual fund shareholders because it can dilute the value of their shares. While not illegal per se, market timing is prohibited by the vast majority of mutual funds.

FINRA found that Oppenheimer failed to prevent a group of five traders' improper, short-term trading of mutual funds on behalf of hedge fund customers—activity that yielded about \$9 million in gross revenue for the firm. Oppenheimer also failed to establish, maintain or enforce supervisory systems and written procedures to detect and prevent improper market timing activities, or to maintain required books and records of the short-term trading of mutual funds through other firms' trading platforms.

During the relevant period, the group maintained about 580 accounts for 15 hedge fund customers in an attempt to circumvent market timing trading blocks put in place by the mutual funds. The multiple accounts also served to conceal the true identity of the account holders and allowed the group to spread timing money across accounts, instead of trading one lump sum, which the mutual funds might have rejected.

For example, between April 2003 and September 2003, the group opened 37 accounts for one hedge fund customer so the customer could continue trading in a particular fund despite receiving notices prohibiting further trading from the fund. From April 1, 2003 to April 25, 2003, the group executed market timing trades in the Seligman Fund in 10 of the customer's accounts. As a result, on April 25, 2003, Seligman blocked trading in those accounts for 90 days due to a pattern of excessive trading.

FINRA found that, in an effort to evade the trading restrictions, on May 6, 2003, the group opened six new accounts for that same customer and continued trading in the Seligman Fund in both the new and the blocked accounts. On May 28, 2003, Seligman blocked those six new accounts for 90 days, again due to excessive trading. To evade the most recent blocks, the group executed trades in the mutual fund in 10 additional accounts for the same customer, leading the Seligman Fund, on June 30, 2003, to block those new accounts from further trading for 90 days.

FINRA also found that the group used 51 different registered representative numbers to create the appearance that the trades were coming from registered representatives who had not previously been blocked from trading.

Oppenheimer received about 200 communications from 65 mutual fund companies advising the firm that short-term trading activity was detrimental to long-term shareholders. Some communications indicated that the group was no longer permitted to trade at all within the mutual funds' family of funds. Nevertheless, the firm failed to monitor the group's activities, allowing improper market timing practices to continue. FINRA also found that the group used "omnibus" trading platforms operated by Schwab and Fidelity to disguise the group's identity so it could continue market timing in funds that had blocked or rejected the group's customers' trades. During the relevant period, the group placed approximately 3,700 improper trades on behalf of 99 accounts in 173 mutual funds through the Schwab and Fidelity trading platforms. Additionally, the firm failed to create or maintain records of the group's trading through the Schwab and Fidelity platforms.

FINRA further found that the group sold variable annuity contracts to its hedge fund clients to allow them to use the annuity sub-accounts as yet another vehicle for market timing mutual funds. During the relevant period, the group—with the approval of at least some senior managers—purchased 159 variable annuity contracts on behalf of their hedge fund clients. Oppenheimer received at least 17 communications from the life insurance companies that issued the contracts restricting the group's trading. Despite these communications, the firm failed to prevent the group from market timing in annuity sub-accounts.

Oppenheimer settled this action without admitting or denying the charges, but consented to the entry of FINRA's findings.

All five traders involved in the improper market timing have been barred from the securities industry for failure to cooperate with the regulatory investigation of the misconduct at Oppenheimer. One trader has appealed the bar to the Securities and Exchange Commission.

## **FINRA Settles with Five Firms for Supervisory Failures, Improper Mutual Fund Sales to More than 5,300 Households; Tens of Millions of Dollars to be Returned to Customers**

### **Merrill Lynch, Prudential Securities, Pruco and UBS Fined a Total of \$2.4 Million; Wells Fargo Investments Receives Credit for Remedial Steps Previously Taken**

FINRA announced has settled cases against five firms for mutual fund sales and supervisory violations—including improper sales of Class B and Class C mutual fund shares and failure to have supervisory systems designed to provide all eligible investors with the opportunity to purchase Class A mutual fund shares at net asset value (NAV) through NAV transfer programs.

For the share class sales violations, FINRA imposed an \$800,000 fine against Prudential Securities and a \$750,000 fine against UBS Financial Services, Inc. for improper sales of Class B and Class C mutual fund shares. A \$100,000 fine was imposed against Pruco Securities for improper sales of Class B shares. In resolving the Class B and Class C share matters, these firms also agreed to remediation plans that will address over 27,000 fund transactions in the accounts of 5,300 households.

To resolve the NAV violations, Merrill Lynch, Prudential Securities, UBS and Wells Fargo agreed to remediation plans for eligible customers who qualified for, but did not receive, the benefit of NAV transfer programs. It is estimated that total remediation to customers will exceed \$25 million.

In addition, FINRA fined Prudential Securities, UBS, and Merrill Lynch \$250,000 each for failure to have reasonable supervisory systems and procedures to identify and provide opportunities for investors to obtain sales charge waivers through NAV transfer programs. From 2001 through 2004, many mutual fund families offered NAV transfer programs that eliminated front-end mutual fund sales charges for certain customers. Customers who redeemed fund shares for which they had paid a sales charge were permitted to use the proceeds to purchase Class A shares of a new mutual fund at NAV—that is, without paying another sales charge. FINRA found that, as a result of inadequate supervisory systems at Merrill Lynch, Wells Fargo and UBS from 2002 through 2004, and at Prudential Securities from 2002 to 2003, certain customers eligible for the NAV programs incurred front-end sales loads that they should not have paid, or purchased other share classes that unnecessarily subjected them to higher fees and the potential of contingent deferred sales charges.

Although FINRA found that Wells Fargo Investments failed to have reasonable supervisory systems and procedures relating to NAV transfer programs, FINRA did not impose a fine because of the firm's proactive remedial actions taken upon its discovery of—and before FINRA's inquiry into—the violative conduct. When Wells Fargo

discovered it had failed to provide certain eligible customers with NAV pricing, the firm initiated a review of its mutual fund sales and acted promptly and in good faith to repay customers and correct its system and procedures. As part of this process, Wells Fargo paid more than \$612,000 in restitution to investors in Class A shares.

"Firms have an obligation to consider all relevant factors when recommending mutual fund investments, to ensure that they recommend the share class that is most advantageous to the customer," said Susan L. Merrill, Executive Vice President and Chief of Enforcement. "The supervisory problems here led not only to the sales of inappropriate mutual fund share classes, but to the failure to identify special sales charge waiver programs on mutual fund purchases. We are pleased that through these settlements, millions of dollars will be returned to customers."

In recommending the purchase of mutual funds, a firm must assess the suitability of the class of shares to be purchased as well as the suitability of the particular fund. Primary considerations include the investment amount, the expected holding period of the investment, the applicable sales loads, fees and expenses associated with each class and the effect of such factors on the ultimate return on investment to the investor.

Each firm settled these matters without admitting or denying the allegations, but consented to the entry of FINRA's findings.